



House of Representatives

General Assembly

File No. 518

February Session, 2000

Substitute House Bill No. 5004

House of Representatives, April 11, 2000

The Committee on Appropriations reported through REP. DYSON of the 94th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

An Act Concerning Full Disclosure Of Prepaid Funeral Service Contracts.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 42-200 of the general statutes is repealed and the
2 following is substituted in lieu thereof:

3 (a) For the purposes of this section and sections 42-201 to [42-206]
4 ~~42-207~~, inclusive, a funeral service contract means a contract which
5 requires the payment of money or the delivery of securities in
6 exchange for the final disposition of a dead human body, including
7 funeral, burial or other services, or the furnishing of personal property
8 or funeral merchandise in connection with any such disposition,
9 wherein the use or delivery of such services, property or merchandise
10 is not required immediately.

11 (b) A funeral service contract shall contain: (1) A consumer notice as
12 set forth in subsection (c) of this section; (2) the name, business address

13 and telephone number of the escrow agent who will administer the
14 consumer's funds; (3) a statement advising the consumer to avoid
15 fraud by contacting the escrow agent to verify the disposition of such
16 funds if the consumer has not received (A) verification, not later than
17 forty-five days after signing the funeral service contract, that the
18 escrow agent has deposited the consumer's funds, or (B) if the
19 consumer fails to receive an annual statement of the consumer's
20 account; (4) if applicable, a clear and conspicuous statement that the
21 consumer may be liable for additional funds for such contracted
22 services, property or merchandise; and (5) a clear and conspicuous
23 statement as to whether the funeral service contract is revocable or
24 irrevocable together with an explanation of the term revocable or
25 irrevocable, as appropriate.

26 (c) The consumer notice shall be on a separate page and in a form
27 substantially similar to the following:

28 "A funeral service contract ensures, upon payment of a sum of
29 money, that the funeral service establishment will provide certain
30 funeral services, property or merchandise at a future date.

31 If you purchase a funeral service contract, you must receive (1)
32 notice of the investment options offered by the funeral service
33 establishment; (2) a statement of the fees charged by the escrow agent
34 to invest and manage such funds; and (3) information concerning the
35 transferability of the funds to other investment options and whether
36 the funeral director, association of funeral directors or other entity will
37 receive compensation from the escrow agent.

38 An escrow agent must be either a bank, a licensed insurance
39 company or a registered broker-dealer.

40 You should receive an annual statement of income and expenses for
41 the escrow funds.

42 The funeral service contract must provide that if specified
43 merchandise is not available, only merchandise of at least equal quality
44 and similar style may be substituted.

45 It is important for you to:

46 (A) Verify the services, property and merchandise that are to be
47 provided as part of the funeral;

48 (B) Ensure that the costs of the services, property and merchandise
49 are explained;

50 (C) Verify whether you will need to provide any additional money
51 for such services, property and merchandise;

52 (D) Determine who will receive any surplus funds in the event the
53 funds in the escrow account exceed the cost of the contracted funeral
54 services, property and merchandise;

55 (E) Obtain the name, address and telephone number of the person
56 who will be holding your funds (known as an escrow agent);

57 (F) Contact the escrow agent if, by the forty-fifth day after you sign
58 the funeral service contract, you do not receive verification that the
59 escrow agent has received and deposited your funds."

60 Sec. 2. Section 42-201 of the general statutes is repealed and the
61 following is substituted in lieu thereof:

62 (a) No person, firm or corporation shall enter into a funeral service
63 contract to provide such services, property or merchandise unless such
64 person, firm or corporation is licensed in accordance with the
65 provisions of chapter 385. No person may arrange, promote or sell any
66 funeral service contract on behalf of a funeral service establishment
67 unless such person is an embalmer or funeral director licensed in
68 accordance with the provisions of chapter 385 and bonded in

69 accordance with subsection (b) of this section.

70 (b) Each funeral service establishment that enters into a funeral
71 service contract to provide such service, property or merchandise or
72 arranges, promotes or sells a funeral service contract shall obtain a
73 bond written by a surety authorized to write such bonds in this state,
74 in an amount not less than fifty thousand dollars. Such bond shall be
75 conditioned upon such funeral service establishment truly and
76 faithfully accounting for all funds received relative to a funeral service
77 contract.

78 (c) Any person damaged by the wrongful conversion of funds paid
79 for a funeral service contract may proceed on such bond against the
80 principal or surety thereon, or both, to recover damages, which shall
81 include reasonable attorneys' fees.

82 Sec. 3. Section 42-202 of the general statutes is repealed and the
83 following is substituted in lieu thereof:

84 (a) A licensed funeral service establishment shall deposit any money
85 or securities [which] that such establishment receives pursuant to a
86 funeral service contract [, and within] not later than fifteen days [of]
87 after its receipt of such money or securities, in one or more escrow
88 accounts established in accordance with the provisions of this section.
89 Not later than thirty days after receiving funds from a licensed funeral
90 service establishment, the escrow agent shall send the consumer
91 written verification that the funds have been deposited in accordance
92 with the provisions of this section.

93 (b) (1) Each escrow account established pursuant to this section shall
94 be administered and maintained by an escrow agent [. The funeral
95 service establishment which deposits money or securities in such
96 escrow account shall appoint such agent who] designated in the
97 funeral service contract.

98 (2) The funeral service establishment shall enter into a contract with
99 the escrow agent designated in the funeral service contract, either
100 directly or through an association of funeral directors or other entity.
101 Such contract shall contain provisions that (A) clearly indicate all fees
102 to be charged by the escrow agent and whether any portion of such
103 fees will be shared with any association of funeral directors or other
104 entity, and (B) explain the duties and responsibilities of the escrow
105 agent, including, but not limited to, a provision stating that the escrow
106 agent may only invest such funds in accordance with the provisions of
107 subsection (c) of this section and may only dispense such funds in
108 accordance with the provisions of this chapter. A copy of the contract
109 shall be provided to the purchaser of funeral services, property or
110 merchandise upon request.

111 (3) A designated escrow agent shall be one of the following: [(1)] (A)
112 A national banking association; [(2)] (B) a state bank and trust
113 company; [(3)] (C) a federal or state chartered savings bank; [(4)] (D) a
114 federal or state chartered savings and loan association; [(5)] (E) a
115 licensed insurance company; [,] or [(6)] (F) a registered broker-dealer.
116 [No such institution shall be appointed as an agent unless such
117 institution is authorized by law to act as an escrow agent.]

118 (c) Assets held in escrow accounts established pursuant to this
119 section shall be invested in one or more of the following: (1) Deposit
120 accounts insured by the Federal Deposit Insurance Corporation; (2)
121 accounts insured against loss of principal by an agency or
122 instrumentality of the United States government; (3) bonds in which
123 savings banks in this state may, by law, invest; (4) bonds of the United
124 States or any agency thereof or of this state or any municipality of this
125 state; or (5) any other deposit account, insurance contract, or security
126 of a quality, safety and expense comparable to those set forth in this
127 subsection.

128 (d) All interest, dividends and other income earned on the amounts

129 deposited in an escrow account pursuant to this section shall be
130 retained in such escrow account and credited, less any administration
131 expenses, to the respective interests of those persons for whose benefit
132 the escrow account is maintained. Amounts in an escrow account shall
133 be removed from such account only as provided in sections 42-200 to
134 [42-206] 42-207, inclusive, as amended by this act. Each party to a
135 funeral service contract shall receive an annual statement of the
136 [amount] amounts credited and the amount of all expenses charged to
137 such party's escrow account, and the annual rate of return on such
138 funds after expenses. Such statement shall include the name and
139 address of the escrow agent.

140 (e) If a purchaser of funeral services, property or merchandise
141 defaults in making payments required under the terms of such
142 contract, or if the purchaser or the person responsible for making
143 funeral arrangements for a deceased beneficiary under section 45a-318
144 fails to have the funeral service establishment provide services, the
145 funeral service establishment may retain any origination fee and any
146 costs actually and reasonably incurred by such establishment in the
147 performance of the contract as liquidated damages, provided the sum
148 of the amount retained as an origination fee and the amount retained
149 to pay for costs incurred by the funeral establishment in the
150 performance of the contract shall not exceed an amount equal to five
151 per cent of the amount in the escrow account at the time the purchaser
152 of funeral services defaults in making such payments, and provided
153 further that the funeral service contract specifically allows for such
154 liquidated damages. The balance of any amount remaining in the
155 escrow account shall be paid by the escrow agent to such purchaser.
156 [upon request.]

157 (f) A person, firm or corporation licensed in accordance with the
158 provisions of chapter 385 which enters into a funeral service contract
159 shall furnish the agent of an escrow account established in accordance
160 with the provisions of this section with the name of the purchaser of

161 such services, property or merchandise, the address and name of the
162 beneficiary of the funeral service contract and the amount contracted
163 for, [, together with a copy of the contract listing the services, personal
164 property or merchandise to be furnished by the funeral service
165 establishment.] Nothing in this section shall prohibit the commingling
166 within an escrow account of the money or securities received under
167 more than one funeral service contract for the purpose of management
168 and investment of funds in such escrow account provided the escrow
169 agent maintains a separate accounting of each escrow account.

170 (g) A funeral service contract shall provide that, if the particular
171 merchandise provided for in the contract is not available at the time of
172 death, the funeral service establishment shall furnish merchandise
173 similar in style and at least equal in quality of material and
174 workmanship to the merchandise provided for in the contract.

175 Sec. 4. Section 42-203 of the general statutes is repealed and the
176 following is substituted in lieu thereof:

177 Funds held in an escrow account in accordance with the provisions
178 of a funeral service contract shall remain intact unless such funds are
179 commingled in accordance with the provisions of subsection (f) of
180 section 42-202, as amended by this act, or the purchaser of funeral
181 services, property or merchandise defaults in making payments
182 required under the terms of the contract, as provided in subsection (e)
183 of section 42-202, as amended by this act, or until the services
184 contracted for have been performed or the contracted for property or
185 merchandise has been delivered. Upon submission to the escrow
186 agent, by the funeral service establishment, of [proof] an affidavit by
187 the person responsible for making funeral service arrangements for a
188 deceased beneficiary that the services, personal property and
189 merchandise contracted for have been fully performed or delivered,
190 the escrow agent shall pay to such funeral service establishment the
191 amounts [deposited therein pursuant to such funeral service contract,

192 and all income earned thereon and retained in the escrow account]
193 duly charged for such rendered services, personal property or
194 merchandise. The escrow agent shall transfer any surplus funds to the
195 purchaser's estate unless the contract provides otherwise or the
196 beneficiary was a recipient of the Title XIX Medicaid program at the
197 time of death, in which case the escrow agent shall transfer any
198 surplus funds to the State Treasurer. If, for any reason, the funeral
199 service establishment which has entered into a funeral service contract
200 for the sale of services, personal property, or merchandise and which
201 has deposited the funds into an escrow account in accordance with the
202 provisions of sections 42-200 to [42-206] 42-207, inclusive, as amended
203 by this act, fails to meet its obligation under such contract promptly
204 after the death of the person to be benefited, the [family, the next of
205 kin, or the legal representative of the deceased] person responsible for
206 making funeral arrangements for a deceased beneficiary, having
207 provided for such services, personal property or merchandise on
208 behalf of the deceased person, [may] shall receive from the escrow
209 agent the amount [of money in such escrow account] charged for such
210 services, personal property or merchandise. An affidavit [which] that
211 states [that] services have been performed or property delivered,
212 signed by [a member of the family, next of kin, or legal representative
213 of the deceased] the person responsible for making funeral
214 arrangements for a deceased beneficiary, and by the funeral service
215 establishment which has provided such services, personal property or
216 merchandise, and which is delivered to the escrow agent shall be
217 sufficient to authorize an escrow agent, acting alone, to make such
218 payment without liability to the person making the deposit of such
219 money into the escrow account or to any other person. Nothing
220 contained in this section shall relieve the funeral service establishment
221 of its liability for nonperformance.

222 Sec. 5. Section 42-207 of the general statutes is repealed and the
223 following is substituted in lieu thereof:

224 An irrevocable funeral service contract may be entered into in which
225 the amount held in escrow may be disbursed only upon the death of
226 the beneficiary and upon submission by the funeral service
227 establishment of an affidavit by the person responsible for making
228 funeral arrangements for a deceased beneficiary that the services,
229 personal property or merchandise contracted for have been fully
230 performed or delivered, provided such a contract does not exceed five
231 thousand four hundred dollars and all interest accumulates to the
232 escrow account and is inaccessible to the beneficiary. Such irrevocable
233 funeral service contracts may be transferred from one funeral service
234 establishment to another upon request of the beneficiary. The purchase
235 of an irrevocable funeral service contract shall not preclude an
236 individual from purchasing other funeral service contracts that are
237 revocable. Upon the death of a beneficiary who is a recipient of the
238 Title XIX Medicaid program, any surplus funds held in an irrevocable
239 funeral service contract escrow account after all funeral and burial
240 expenses have been paid in full, shall be paid to the State Treasurer.

AGE Committee Vote: Yea 13 Nay 0 JFS C/R GL

APP Committee Vote: Yea 50 Nay 0 JF

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: See Explanation Below

Affected Agencies: Department of Consumer Protection, Office of the State Treasurer, Department of Social Services

Municipal Impact: None

Explanation**State Impact:**

The bill requires that any funds remaining in the irrevocable funeral service escrow account of a Medicaid recipient after all funeral and burial expenses have been paid in full, must be paid to the Treasurer. This may result in an indeterminate revenue gain to the state.

The bill also requires a funeral director selling irrevocable funeral service contracts to: 1) obtain a bond from a company authorized to write bonds in the state; 2) disclose certain information; 3) place requirements on the contracts between funeral homes and escrow agents. These changes may result in a minimal workload increase to the Department of Consumer Protection, which can be handled within the normal budgetary resources.

OLR Bill Analysis

sHB 5004

AN ACT CONCERNING FULL DISCLOSURE OF PREPAID FUNERAL SERVICE CONTRACTS.

SUMMARY:

This bill requires:

1. pre-need funeral contracts to contain specified disclosures;
2. funeral homes to post a \$50,000 bond before selling these contracts;
3. escrow agents who receive this money to give certain notices to consumers;
4. a contract between the funeral home and the escrow agent (it specifies what it must contain);
5. additional disclosures on the annual account statement; and
6. surplus funds in the account after the funeral to be turned over to the deceased person's estate or, for someone who was on Medicaid when he died, to the state treasurer.

Finally, the bill makes minor and technical changes.

EFFECTIVE DATE: October 1, 2000

CONTRACT PROVISIONS

The bill requires a pre-need funeral contract to contain:

1. a consumer notice as specified below;
2. the name, business address, and phone number of the escrow agent

that will administer the funds;

3. a statement advising the consumer to avoid fraud by contacting the escrow agent to verify what has happened to the funds if he does not receive (a) verification that the agent has deposited the funds within 45 days after signing the contract or (b) an annual account statement; and
4. a clear and conspicuous statement (a) as to whether the contract is revocable or irrevocable and an explanation of these terms, as appropriate and (b) that he may, if applicable, owe additional funds for the contracted services or items.

CONSUMER NOTICE

The bill requires the consumer notice to be on a separate page and specifies what it must substantially say. The notice must contain a description of what a funeral service contract is. It must describe the information the consumer must receive, including investment options, and the escrow agent's investment and management fees. It must disclose whether the funds can be transferred to other investments and whether, in that event, the agent will compensate the funeral director, funeral directors association, or other entity. The notice must inform the consumer that an escrow agent must be either a bank, a licensed insurance company, or a registered broker-dealer and that the consumer should receive an annual statement of income and expenses for the escrow funds. The notice must also state that the contract must provide that if specified merchandise is not available, only merchandise of at least equal quality and similar style can be substituted.

The notice must state that it is important for the consumer to:

1. verify the services, property, and merchandise to be provided and ensure that their costs are explained;
2. verify whether he will need to pay any additional money for the services, property, and merchandise;
3. determine who will receive surplus funds if the funds in the

account exceed the contracted funeral cost;

4. obtain the name, address, and phone number of the person holding the funds (the escrow agent); and
5. contact the escrow agent if, by the 45th day after signing the contract, the consumer does not receive verification that the escrow agent has received and deposited the funds.

SURETY BOND

The bill requires a funeral home to obtain a surety bond of at least \$50,000 before entering into, arranging, promoting, or selling pre-need funeral service contracts. The bond must be conditioned on the funeral home truly and faithfully accounting for all funds it receives for such a contract. The bill gives anyone damaged by the wrongful conversion of such funds the right to sue on the bond to recover damages, including reasonable attorneys' fees.

NEW ESCROW AGENT REQUIREMENTS

The bill gives the escrow agent 30 days after receiving funds from a funeral establishment, to send the consumer written verification that he has deposited the funds as required.

The bill requires the funeral home to enter into a contract with the designated escrow agent, either directly, through a funeral directors' association, or through another entity. The contract must contain provisions that:

1. clearly indicate all the escrow agent's fees and whether any funeral directors' association or other entity will share any part of the fees and
2. explain the escrow agent's duties, including that the agent may only invest the funds according to existing statutory requirements.

Under the bill, the purchaser must receive a copy of this contract if he requests it.

ANNUAL STATEMENT

The bill requires the annual statement to include not only the principal and interest credited to the account, but also the expenses charged to the account and the annual rate of return after expenses.

DEFAULT

If the purchaser defaults on the contract, the funeral home can currently collect certain damages. This bill allows this only if the contract provides for such collection.

COMMINGLING OF FUNDS

Current law allows commingling of funds within an escrow account. The bill continues to allow this, but requires the escrow agent to maintain a separate accounting for each escrow account.

ACCOUNT SURPLUS FUNDS

Current law requires the escrow agent, when the funeral home submits proof that the services and items contracted for have been provided, to pay the principal and interest in the account to the home. The bill, instead, requires only that the agent pay the funeral home the amounts it proves, by affidavit, are duly charged for the services and requires the agent to transfer the remainder to the purchaser's estate unless the contract provides otherwise. But if the deceased was on Medicaid when he died, the bill requires the agent to transfer any surplus funds to the state treasurer for both revocable and irrevocable funeral contracts.

BACKGROUND***Pre-Need Funeral Contracts***

By law, funeral homes may contract with consumers in advance to provide services and products for a funeral. These contracts can be revocable or, if their value does not exceed \$5,400, irrevocable. The law requires funeral homes to place the money the consumer pays on

such a contract in an escrow account administered by an escrow agent, that must be a bank, insurance company, or registered broker-dealer. It places restrictions on what the funds can be invested in, requires each party to the contract to receive an annual statement, and sets other procedures for handling the escrow accounts and what to do in case of defaults on either side.

COMMITTEE ACTION

Select Committee on Aging

Joint Favorable Substitute Change of Reference

Yea 13 Nay 0

General Law Committee

Change of Reference

Yea 15 Nay 0

Human Services Committee

Change of Reference

Voice Vote

Appropriations Committee

Joint Favorable Report

Yea 50 Nay 0